INDEX

	Page
Opinion below	2
Jurisdiction	3
Questions presented	3
Statutes and regulations involved	4
Statement	4
Argument	23
Conclusion	32
Appendix	33

CITATIONS

Cases:	
Delaney v. *United States*, 273 U. S. 586	31
District of Columbia v. *Clawans*, 300 U. S. 617	29
Glasser v. *United States*, 315 U. S. 60	28
United States v. *Easterday*, 57 F. 2d 165, certiorari denied, 286 U. S. 564	29
United States v. *Johnson*, 319 U. S. 503	31
United States v. *Pelley*, 132 F. 2d 170, certiorari denied, 318 U. S. 764	32
Statutes and Regulations:	
Foreign Agents Registration Act of June 8, 1938, c. 327, 52 Stat. 631, 22 U. S. C. 611:	
Sec. 1	33
Sec. 2	34
Sec. 5	34
Act of August 7, 1939, c. 521, 53 Stat. 1244	35
Act of April 29, 1942, c. 263, 56 Stat. 248	38
State Department Regulations issued on September 15, 1939, pursuant to Section 6 of the Act of June 8, 1938	36
Miscellaneous:	
H. Rep. 1381, 75th Cong., 1st sess.	25

690105—46——1

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 925

GERMAN-AMERICAN VOCATIONAL LEAGUE, PETITIONER

v.

UNITED STATES OF AMERICA

No. 926

D. A. B. RECREATIONAL RESORT, INC., PETITIONER

v.

UNITED STATES OF AMERICA

No. 927

FRITZ SCHROEDER, PETITIONER

v.

UNITED STATES OF AMERICA

No. 928

ALBERT ROBERT BERTRAM, PETITIONER

v.

UNITED STATES OF AMERICA

No. 929

GUENTHER GIBBE, PETITIONER

v.

UNITED STATES OF AMERICA

No. 930

OTTO BREMER, PETITIONER

v.

UNITED STATES OF AMERICA

No. 931

THEODORE KOEHN, PETITIONER

v.

UNITED STATES OF AMERICA

No. 932

JOSEPH LIEBLEIN, PETITIONER

v.

UNITED STATES OF AMERICA

No. 933

GUSTAVE SCHMIDT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The majority and dissenting opinions in the circuit court of appeals (R. 1383–1399) have not yet been reported.

JURISDICTION

The judgments of the circuit court of appeals were entered on January 31, 1946 (R. 1399–1405). The petition for writs of certiorari was filed March 9, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

The principal questions presented are:

1. Whether an organization which acted under the direction of a foreign principal in the dissemination of propaganda was required to register under the Foreign Agents Registration Act as it read prior to 1942.

2. Whether the trial judge abused his discretion in refusing, for security reasons, to permit petitioners to cross-examine a government witness who had joined the defendant organization as to his employment some years prior to the time he became a member.

Petitioners also raise but do not brief the following questions:

3. Whether the evidence is sufficient to show an agreement on the part of German American Vocational League to act as a foreign agent.

4. Whether the evidence is sufficient to connect the individual defendants with the conspiracy charged.

5. Whether propaganda analysis by a government expert was competent evidence.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutory provisions and regulations appear in the Appendix, *infra*, pp. 33–39.

STATEMENT

Petitioner, the German-American Vocational League, Inc., commonly referred to as D. A. B. (Deutsch-Amerikanische-Berufsgemeinschaft), is a corporation organized in New York State in 1928 under the name of German-American Commercial League, Inc., the name of which was changed to its present form on October 19, 1936 (R. 271–272, 412–413). D. A. B. Recreational Resort, Inc., is a New York corporation organized in 1937 to hold title to real property on behalf of D. A. B. (R. 140–141, 273). The other petitioners are members of the board of directors or officers of D. A. B. (R. 336, 492, 531, 732–733, 868, 1150, 1163, 1166, 1277–1278).

An indictment in two counts, only the second of which is material here,[1] was returned against petitioners and others in the United States District Court for the District of New Jersey. The second count charged a conspiracy to violate the Foreign Agents Registration Act of 1938, as amended, in that, well knowing that D. A. B.

[1] The first count was dismissed at the close of the Government's case (R. IX).

was an agent, publicity agent, and representative of the German Reich and various instrumentalities of that government, petitioners schemed to conceal such fact and failed to register or caused and assisted D. A. B. to fail to register as a foreign agent, as required by the statute. The essence of the scheme set forth in the indictment is that, before passage of the act, D. A. B. was an agency of various instrumentalities of the German Reich, including the German Labor Front with which it admittedly had a contract; that, although in anticipation of the passage of the Act, it cancelled its agreement with the German Labor Front, such agreement did not represent the full scope of the organization's agency; and that thereafter the organization continued to act as a German agent, concealing such fact with the aid of the petitioning officers and directors.[2] Petitioners were convicted after a trial by jury (R. X). The corporations were fined $5,000 each. The individual defendants, except petitioner Schmidt, were sentenced to imprisonment for two years (R. XI–XII). Imposition of sentence against Schmidt was suspended and he was placed on probation for five years (R. XI). The sentences against petitioners Lieblein and Schroeder run concurrently with

[2] The indictment is not printed in the record. It is summarized generally in the judge's charge (R. 1351) and some parts are set forth in the dissenting opinion below (R. 1395–1396).

terms being served by them on other charges (R. XI–XII). Petitioner Gibbe elected to enter upon service of his sentence and his full term will expire on June 19, 1946. On appeal to the Circuit Court of Appeals for the Third Circuit, the judgments were affirmed (R. 1399–1405), one judge dissenting as to the construction of the statute (R. 1391–1399).

The evidence for the Government may be summarized as follows:

A. *The agreement with the German Labor Front.*—D. A. B. developed from a union of German commercial workers (Deutschnationaler Handlungsgehilfen Verband) which, prior to Hitler's accession to power, had for many years been organized on international lines (R. 17–19, 272–273). Its policies were such that it willingly embraced national socialism (see R. 18, 371–372, 379), and, instead of being dissolved as were other labor unions, it was "absorbed" by the German Labor Front (R. 215–217; see also R. 21). The membership base of the organization in Germany was broadened to include, not only white collar workers, but other wage earners as well (R. 373). A similar change of membership took place in the American organization (R. 34–36, 374, 380, 393–394, 398). To reflect the new character of the membership, the organization changed its German name to Deutsch-Amerikanische Berufsgemeinschaft and adopted the symbol of the German Labor Front in 1935 (R. 393–394). In 1936, the English name

of the organization was changed from German-American Commercial League to German-American Vocational League, Inc. (R. 19, 145–146).

Both before and for a time after Hitler's accession to power, half of the dues paid by members of the organization was sent to the parent organization in Hamburg, Germany (R. 21, 39, 274, 283). During 1935, the German Labor Front announced that citizens of foreign countries could not be members of that organization, and it disclaimed any liability for social security benefits to American citizen members (R. 285–286). This caused concern to the D. A. B. organization in the United States, and Euting, a special representative of the Labor Front, came to this country in 1936 in order to adjust the conflict that had arisen (R. 41–42, 286). In June and July of that year Euting held a series of conferences with national officers of D. A. B. (R. 51–53, 286–287). Dr. Draeger of the German Consulate, head of the Nazi Party in New York (R. 493), attended a number of the meetings (R. 72, 310). Euting at first refused to refund any part of the dues paid by American citizens, but later agreed to recommend that an amount corresponding to the sum paid by American citizens for the period from 1933 to 1936 be refunded to the organization, provided that money was used to purchase a recreation center for the members (R. 60–62, 68,

690105—46——2

287–288, 290–291), and Euting's superior approved of the arrangement (R. 291, 298, 355). Euting suggested that the recreational facilities be put on a broader basis (R. 93). It was also agreed that, thereafter, dues of American citizens were to be kept in the United States and that German nationals were to be "extraordinary members" of D. A. B. who, although enjoying the privileges of the organization, were to be under the direct jurisdiction of the German Labor Front. 75 per cent of the dues of the German nationals was to be sent to Germany and 25 per cent kept by D. A. B. for overhead expenses (R. 54–56, 67–68, 73–74, 287–288, 398, 461–462). Volbers, the treasurer (R. 20) and Johannsen, the president of D. A. B. at the time the agreement was reached (R. 273), testified for the Government as to these arrangements. Their testimony differed as to whether the terms had been reduced to writing, Volbers stating that a contract had been signed (R. 62, 67, 148), whereas Johannsen denied the existence of a written agreement (R. 291, 298). Johannsen admitted that a letter on the stationery of the German Labor Front, dated January 12, 1937, embodying the above terms in relation to German nationals and promising reimbursement of an unspecified amount representing dues paid by American citizens, was prepared in the United States and subsequently sent from Germany (R. 445–447, 468; see R. 292–293). The purpose of this letter, he said, was to

have something to show in case of inquiry by the then active Dickstein congressional investigating committee (R. 495–497). On January 5, 1937, Johannsen sent a letter to chapter leaders of the organization in which he stated that "we have signed an agreement with the German Labor Front which becomes effective on January 1, 1937" (Ex. G–50, R. 422–425). In the same letter he announced that Zeglin (a member of the Labor Front) had been elected to the Board of Directors of D. A. B. and would take care of German nationals; that the German members would continue to receive monthly copies of *Der Deutsche Im Ausland* (The German Abroad), official publication of the Labor Front, and *Der Deutsche In Nord Amerika* (The German in North America), official publication of D. A. B., and that an "agreement" had been reached by which American members of D. A. B. who visited or resided in Germany would receive certain privileges through the Labor Front (R. 422–424).

During 1937, Zeglin, who was mentioned in the January 5 letter, maintained a desk in the national office of D. A. B. (R. 69–70, 301–303). Thirteen thousand dollars were paid by the Labor Front to D. A. B. through Zeglin, and part of that money was used to purchase Camp Bergiwald in New Jersey (R. 70–71, 317, 485–486). D. A. B. Resort Corp., Inc., held title to the camp on behalf of D. A. B. (R. 140–141). The site of the camp was inspected by a representative of the

German consulate as a condition precedent to the release of the funds (R. 355; see also R. 76).

In the spring of 1938, the McCormack bill for registration of foreign agents received considerable publicity (R. 79, 319). At a meeting of the board of directors of D. A. B., it was decided that registration would be undesirable (R. 80, 318). After consultation with an attorney, it was decided in June 1938 to cancel the agreement with the Labor Front (R. 80, 470–472). The problem was discussed with Dr. Draeger of the German consulate (R. 447–448, 471). Zeglin returned to Germany to discuss the fate of the German nationals and, upon his return, he left the D. A. B. office and moved to the German consulate (R. 100, 102, 357). He founded a separate organization known as R. D. V., open only to German nationals (R. 102–103). D. A. B. abolished the distinction between American and "extraordinary" German members and opened its membership to German nationals as well as American citizens (R. 106–107, 331, 473). The office holders were instructed by an official letter dated August 18, 1938, to inform members of the reorganization resulting from the cancellation of the contract, and "in case any comrades desire further information this should be given if possible in personal conversations after the meeting" (Ex. G–18, R. 330). A number of German nationals retained their D. A. B. membership (R. 108, 473, 765, 856). Furthermore, D. A. B. and the newly established

R. D. V. conducted meetings together, used the same club houses, and attended the same affairs (R. 1148, 857–858, 864).

B. *Other activities prior to the cancellation of the Labor Front Agreement.*—From 1933 on, D. A. B. and its officers were active in the dissemination of German propaganda.

Publications.—In 1933, the magazine published by the German Vocational League was known as *Der Deutsche Kaufmann Im Auslande* (The German Merchant Abroad); the D. A. B. publication was called *Der Deutsche Kaufmann In Nord Amerika* (The German Merchant in North America) (R. 21–22, 642). In April 1934 the Labor Front changed the name of its magazine to *Der Deutsche Im Auslande,* and in September 1934 D. A. B. changed the name of its magazine to *Der Deutsche in Nord Amerika* (R. 642). Both the Labor Front and the D. A. B. publications were distributed to members of D. A. B. (R. 94–96, 155–156, 403). According to the propaganda analysis of the Government's expert witness, of the 138 articles appearing in the D. A. B. publication in the period from 1935 through August 1938, 67 percent favored Germany, and none represented Germany in an unfavorable light; while 7 percent favored the United States, and five articles presented the United States in an unfavorable light (R. 660).

Official reports of the activities of D. A. B. for the years 1933 and 1934 show that "National So-

cialist enlightenment literature" was obtained from various German organizations, including the Foreign Office of German Vocational Groups, and was made available to members for study (R. 377, 383).

Speeches and Celebrations.—Throughout the years from 1933 to 1938, speakers from Germany lectured on problems of national socialism and German foreign policy (R. 121–122, 327–328, 401, 848, 869, 883, 1122). German consuls frequently attended and spoke at meetings (R. 359–360, 873, 875–876, 942). D. A. B. participated in German national holiday celebrations sponsored by the consulate (R. 360, 416–417). In conjunction with the consulate it took an active part in raising funds for Winter Relief, an official charity of the German government (R. 225, 307, 360–361, 396, 409–410, 419–420, 552–553, 881).

Films.—Films supplied by the German Railroad Information Service, an official agency of the German government (which spent large sums of money in this country but earned none here (R. 799–800, 1128)), and films supplied by the German consulate were regularly shown to members and their guests (R. 125, 127, 448–449, 782–784, 1129–1130). D. A. B. reported to the German Railroad Information Service the figures of attendance at these meetings and the German Railroad Information Service in turn made reports to Germany (R. 800–802). Among the films shown were frankly propaganda pictures, such as

"Echoes of the Homeland," "Triumph of Will," "New Boundaries" (R. 125, 394, 396, 401, 449, 786).

Youth Group.—A Youth Group, conducted by petitioner Lieblein, was fashioned on the lines of the Hitler Youth Organization (R. 400, 437–439, Ex. G–98, R. 503). In a signed statement (Ex. G–98), Lieblein admitted that "the purposes of both groups were similar to a certain extent, namely the indoctrination of its members into Nazi ideology. This indoctrination was performed through lectures at meetings." The group used Camp Bergwald as headquarters (R. 112, 503). It regularly participated in a solstice ceremony which was designed to symbolize the unity of all Germans (R. 531, Ex. G–98). In 1937 Lieblein and two members of the Youth Group visited Germany at the expense of D. A. B. through the Labor Front, and attended a camp of German Hitler Youth (R. 112, 115, 344–348, 506–507). Through Zeglin and as the result of Lieblein's efforts during his visits in Germany, a library of National Socialist literature was set up for the benefit of the Youth Group (R. 517–523, Ex. G–180).

Re-Emigration Service.—From the start the League was active in assisting persons of German stock to emigrate to Germany. The organization gave advice in this matter and conducted a special emigration advisory service (R. 382, 393). An agreement was reached with the Labor Front as

to rights of D. A. B. members returning to Germany (R. 404). When members returned to Germany they were given a letter certifying that they were members in good standing of D. A. B. (Ex. G–72, R. 560–561).

Liaison with German officials.—In addition to the visit of members of the Youth Groups to Germany, see *supra,* p. 13, other representatives of D. A. B. visited Germany and conferred with German officials. In 1937 and again in 1938, Johannsen and Glattfelder, president and secretary of the organization, made trips to Germany and conferred with officers of the German Labor Front (R. 342–343, 347, 354–355). Petitioner Schmidt was sent to Germany for treatment of his illness, but, after a rest period, he also attended the Adolph Hitler Leadership School (R. 116, 339, 435). On September 11, 1938, he wrote that he was giving a course in oratory which would enable him to use his Danzig material (R. 435). Petitioner Kiesler attended a camp which was conducted for Germans living in foreign countries at which visitors were taught how to spread propaganda (R. 906–910, 995).

As previously shown, *supra,* the organization maintained close relations with German consuls. Dr. Draeger, head of the Nazi Party in the United States, took an active part in negotiations between D. A. B. officials and Euting and inspected Camp Bergwald before it was purchased. An official of the Foreign Division of the Nazi Party visited

New York in 1936 in order to adjust relations between D. A. B. and the German-American Bund (R. 315). Dr. Draeger attended this conference as well (R. 315).

C. *Activities after cancellation of the Labor Front agreement.*—All these activities continued unabated after the cancellation of the agreement with the German Labor Front in anticipation of the passage of the Foreign Agents Registration Act.

Publications.—After cancellation of the Labor Front agreement, distribution of the Labor Front publication was discontinued, but D. A. B. supplied its members with *Der Volksdeutsche,* a publication of the Volksbund fur das Deutschtum Im Ausland (League of Germans Abroad) (R. 361, 441, 443, 770–771, 1104). This change was explained in a letter by National Leader Buttig to a member of the Chicago Chapter as follows (Ex. G–160):

> We can no longer subscribe to "Der Deutsche im Ausland" or have it delivered to us free because to do so would amount to a German tie, a connection with a German organization, the German Labor Front. Such a connection has—since last summer—been made subject to registration, as you undoubtedly know. Hence the complete severance. Instead a private organization, the V. D. A. sends us regularly, even twice a month, its publication, the "VOLKS-

> DEUTSCHE" as well as its American Information Service. We are permitted to accept those publications as gifts from a private German organization. If all chapters of your district should not regularly get copies of this publication please let me know immediately and advise whereto the publication should be sent and how many copies you desire. I shall see to it that you get them.

V. D. A. was in fact supported by the Nazi Party and the German Government (R. 226–227, 255–256), and was directed by the Institute of Propaganda and Enlightenment (R. 235).

D. A. B. continued to publish its own organ, *Der Deutsche Im Nord Amerika,* changing its name to *Der Amerika Deutsche,* after the Labor Front Publication (*Der Deutsche Im Auslande*) had been changed to *Der Auslande Deutsche* (R. 642–643). Propaganda analysis shows no appreciable change in the character of the publication (R. 661). From September 1938 (the approximate date of the Registration Act) to December 1941, 192 articles appeared in the publication, of which 65 percent favored Germany; none represented Germany in an unfavorable light; 9 percent represented the United States in an unfavorable light; and 7 percent, 15 articles, were favorable to the United States (R. 660–661). A study of the sources of the articles appearing in the publication from 1940 to 1941 shows that

more than half of the articles on topics other than organization news came from official German sources (R. 643–645). Articles were obtained from the German Railroads Information Service, some for exclusive publication in the D. A. B. magazine (R. 589, 592, 733–735).

Der Amerika Deutsche had an English column called *In Retrospect* (R. 667, 1175). In 1940, D. A. B. decided to expand its column into a separate magazine (Ex. G–161, G–169). The name of D. A. B. was not mentioned in the publication, and a trade name certificate was filed in the name of petitioner Lieblein (R. 1175–1176). Members were directed not to put the D. A. B. stamp on the publication because the magazine "ought to be read by the American reader. He need not know where the paper comes from. We are not producing the paper for the purpose of advertising ourselves, but primarily for the purpose of enlightenment" (R. 1200; Ex. G–145; see also Ex. G–161). On April 15, Lieblein wrote to petitioner Schmidt (Ex. G–169):

> The Consulate General here in New York, as well as the Association of German Nationals, have both—to give you an example—highly recognized and approved of our work in enlightenment through the distribution of our magazine "In Retrospect."

In Retrospect was mailed to members together with the German D. A. B. publication (R. 614–615, 768). Lieblein told the witness Richards

that Orgell (representative of V. D. A. in the United States (R. 119, 248)) was an important contributor to both magazines but that his activities were not openly revealed (R. 958).

Mailing lists of the Germany Library of Information were given to D. A. B., and *Facts in Review,* issued by the Library, was distributed to D. A. B. and its chapters (R. 976, 1001–1002, 1105).

Speeches and celebrations.—The organization continued to work with German consulates in support of the German Winter Relief Fund (R. 841, 843, 965–967) and continued to participate in consulate celebrations of Nazi holidays (R. 551, 844–845). After the war in Europe commenced, it aided the Kyffhaeuser Society in collecting money for German prisoners of war (R. 1271, Ex. G–26, G–162). German consuls attended important affairs of the various chapters (R. 966–968, 1114–1115, 1154, 1156), and as late as May 1941, Dr. Fricke of the German Consulate in Chicago conducted a celebration of German Labor Day for D. A. B. (R. 1108). Lecturers continued to talk on topics relating to Nazi ideology (R. 1107).

Films.—German propaganda films supplied by the consulate or the Railroad Information Service continued to be shown after the cancellation of the Labor Front Agreement. For example in 1940, the San Francisco Chapter displayed a film called "Colonial School at Rendsburg," a

German Consulate film of propaganda character (R. 1131, 1155). "Triumph of the Will," a picture widely displayed in the earlier period, was again shown in 1939 (Ex. G–151). In 1940 films were shown glorifying the triumph of German armies in Poland (R. 847, 1097).

Youth Movement.—The work of the Youth Movement continued in the same manner as before (R. 503, 532, see Ex. G–98). In 1941 Lieblein told the witness, Richards, that on July 14, 1941, he had testified before the Rapp Coudert Committee in New York that D. A. B. had no Youth Group, and that it was therefore decided to dissolve the group (R. 975). On June 22, 1941, the board of directors of D. A. B. voted to dissolve the Youth Group. The German language minutes of that meeting mention the New York investigation, whereas the English minutes of the same meeting merely reflect the decision to dissolve (R. 981–982). Parents were informed of the dissolution by a letter which indicated that further explanation would be made orally (Ex. G–179).

Re-Emigration Program.—D. A. B. continued to sponsor the program for re-emigration of German workers to work in war plants (R. 986, 1001). It continued to issue to members who returned to Germany certificates to be presented to the German Labor Front (R. 989, 1105). Such a letter, issued as late as June 1941, is in evidence (Ex. G–170).

Liaison with German Officials.—Officers of D. A. B. approached German consulates in the midwest for assistance in securing members and distributing pro-Nazi literature, including *In Retrospect* (Ex. G–177, 178). In San Francisco, Beyer, an employee of the German Railroad Information Office, was a leading member of D. A. B., and was active in liaison work between the organization and the German consul, with whom he was very friendly (R. 840, 1139–1140). In 1939, Buttig was in Germany where he reported the activities of D. A. B. to German officials (Ex. G–159). On August 28, 1939, Schroeder, president of D. A. B., wrote to a Chicago member that the time for the national convention would be fixed after he knew when Buttig would return (Ex. G–163).

D. *Activities in 1941.*—As increasing tension developed in the relations between the United States and Germany, the Board of Directors, on June 23, 1941, sent a letter to the membership in which they stated that "we are determined to live up to our oath of allegiance" (R. 983). Schroeder told the government witness, Richards, that the letter was written to keep the F. B. I. "off our trail," and he laughed as he characterized it as a camouflage (R. 978–979). In July 1941, Lieblein wrote to Greiner in Chicago, "All of you will surely understand the purpose of the letter" (Ex. G–156), and Schroeder and Lieblein both wrote Schmidt (Ex. G–155):

> You have surely received the circular of June 23 of this year, and we hope you will understand why it was sent to the entire membership. Bring it to the attention of the comrades not to destroy this letter but rather to preserve it. It should serve to clarify the standpoint of the DAB leadership to any interested agencies or persons. You understand, of course, what we mean. (Ex. G–155.)

In June 1941, the Chicago local was directed to destroy all letters of years prior to 1939 (Ex. G–153; R. 1113, see also R. 1110). Office records of national headquarters were also destroyed (R. 984–985). Schroeder told Richards that the F. B. I. had seized the remaining records, except one file which had previously been delivered to the German consulate (R. 994). After the United States entered the war, a number of suggestions were made for continuing the organization in secret (R. 1004–1006). On January 29, 1942, Lieblein expressed satisfaction with news stories announcing the dissolution of the organization because he felt they would throw the F. B. I. off the trail (R. 992–993).

In submitting the case to the jury, the judge read the statutory definition of "agent of a foreign principal," i. e., "any person who acts or engages or agrees to act as a public-relations counsel, publicity agent, or as agent, servant, representative, or attorney for a foreign principal, and shall include any person who receives com-

pensation from or is under the direction of a foreign principal" (R. 1355–1356). He subsequently charged the jury that in order to convict they must first be satisfied beyond a reasonable doubt that D. A. B. was actually an agent of one of the foreign principals mentioned in the indictment after the act became effective, that defendants knew the organization was such an agent and knew that it was required to register and did not register, and that if they found such facts, they could then consider which of the defendants "knowing the fact of the agency ~~and the fact of the agency~~ and the fact of non-registration" conspired to aid the organization not to register (R. 1358–1359).

In response to requests, he further charged (R. 1368).

> * * * I shall repeat that the burden rests upon the Government to prove that in August 1938, the effective date of this Registration Act, the D. A. B. was acting and continued to act at the behest or command and under the direction of the German Government. In other words, that the D. A. B.—and I shall amend his request—was acting as the agent of the German Government.

He further charged (R. 1369):

> * * * I shall repeat, although I have already told you that if the Government has failed to prove that the German-American Vocational League was employed as

an agent of the German Reich, then of course you must find the defendants not guilty, because the basis of the whole charge is that it was such an agent.

ARGUMENT

1. Petitioners contend (Pet. 16–17, 19, 23–26, 30–35) that the McCormack Act, prior to the amendments of 1942, required the registration only of persons who had an express contract with a foreign principal, and that the district court therefore erred in charging the jury that D. A. B. was required to register under the statute if it acted "at the behest or command and under the direction of the German Government" (R. 1368). The dissenting judge below thought an express contract was required under the act and that such a contract had not been proved, although he conceded that the evidence established that D. A. B. "was acting under the direction, indeed, under the domination" of a foreign principal (R. 1393).

An agreement to do as one is told is, however, itself a contract. Hence, we submit, that, even under the view of the statute taken by the dissenting judge below, the district court's instruction was proper. Petitioners and the dissenting judge below confuse proof of the terms of a contract with proof of its existence. The government may not have been able to establish with exactitude the details of D. A. B.'s agreement with various instrumentalities of the Reich; in fact, the agreement may deliberately have been

kept in general terms. But, as the dissenting judge below in effect conceded, the jury was required to find and the evidence conclusively establishes that D. A. B. voluntarily agreed to act as the Reich directed it to act in disseminating propaganda. The existence of an agreement with the German government was thus established. Manifestly, the fact that the government could not prove the precise terms of the agreement would not render D. A. B. immune from prosecution for failure to register, so long as the existence of an agreement were shown. Even if the agreement were merely a general one to follow directions, it was nonetheless an agreement. As the dissenting judge below himself indicated (R. 1397), it is clear that, to give rise to a duty to register under the Act, a contract of agency need not have the same specificity as might be required in a suit on a contract.

In any case, we submit that, as the majority of the court below held, the statute clearly applies to one acting under direction of a foreign principal whether or not the consent so to act is express. The definition of "agent" in section 1 of the Act as originally enacted specifically covers one who "acts or engages or agrees" to act as a propaganda agent without requiring that the agreement be express. (Appendix, *infra*, p. 33.) In 1939, the definition was amended to state even more definitely that it included "any person * * * under the direction of a foreign principal." Un-

der the judge's charge the jury had to find that D. A. B. came within the precise terms of that definition. The argument that D. A. B. was nevertheless not required to register is based on the fact that section 2 requires an agent to set forth in his registration statement the terms of his contract. One who consents generally to disseminate propaganda sent to him and to act at the direction of his principal is not incapable of complying with this section. He obviously has an understanding, express or implied, the substance of which can easily be stated. Certainly Congress did not intend to allow foreign agents to evade the duty to register merely because they failed to define with nicety the fine details of their agency. The House Report on the Act shows that the purpose of the statute was to throw the spotlight of publicity on those engaged by foreign governments to spread propaganda (H. Rep. 1381, 75th Cong., 1st sess.). The construction of the statute to apply to one who disseminates propaganda under direction of the foreign principal is thus in accord with the exact terms of the statute and with its manifest purpose.

Petitioners (Pet. 25) and the dissenting judge below (R. 1393–1394) refer to the 1942 amendments as support for their view that the prior statute was inapplicable to one acting under the direction of a foreign principal. These amendments added to the definition of agent one "who is, or holds himself out to be, whether or not pursuant to contractual relationship, a public re-

lations counsel," etc., and made similar changes in other parts of the statute (Appendix, *infra*, pp. 38–39). Conceivably, a person may act as, or hold himself out to be, an agent of a foreign government, voluntarily disseminating foreign propaganda without any agreement with that foreign government so to act. It is unnecessary here to consider whether such a person was required to register prior to the 1942 amendments. If those amendments reach any situation not covered by the prior statute,[3] it is the case of an individual who voluntarily purports or assumes to act on behalf of a principal without arrangement with that principal. That is not this case. Here the jury were specifically directed to find, and on evidence did find, that D. A. B. acted under the direction of the Reich, i. e., that it had at least an understanding with the German government to act as its propaganda agent. Such an agreement, as we have shown, was sufficient to establish that D. A. B. was under a duty to register under the statute as it read prior to the 1942 amendments.

2. George Richards, a witness for the government, testified that in 1935 he began to investigate various German organizations. In order to gain their confidence, he published in 1935 a book called *America's Jew Deal* (R. 951). Richards

[3] As the legislative history referred to by the dissenting judge shows, the Committee thought that the additions merely expressed explicitly a construction already implicit in the Act (R. 1394).

did not join D. A. B. until 1940 and his testimony relating to the defendants covers the period after that date (R. 953 ff.).

During the cross-examination of Richards, after a conference with counsel which is not reported in the record, the court announced that, because of the representation of the United States attorney that certain contemplated lines of cross-examination would be hostile to the national welfare, cross-examination thereon would not be allowed (R. 1027–1028). It appears from the record that the proposed cross-examination related to the employment of Richards when he published his book in 1935, to the source of funds for that publication, and to the date when Richards was first employed by the Federal Bureau of Investigation (R. 950, 1028–1030, 1034; see also R. xxxvii). Richards was cross-examined for more than two days, and his background, except for the particulars mentioned above, was fully explored (R. 1042 ff.).[4]

Petitioners urge (Pet. 18, 27–30) that this limitation of the cross-examination of Richards constituted reversible error. However, as the court below points out (R. 1390), the period sought to be covered by the proposed cross-examination antedated by several years the time when Richards first joined the D. A. B. It was made clear to the jury that, while he was a mem-

[4] The record is a joint appendix agreed upon by counsel which does not contain the full testimony.

ber of that organization, Richards was working for the F. B. I. (R. 950, 1052, 1057), and he was corroborated as to part of his testimony by agents in a room adjoining that in which Richards and some of the defendants met (R. 1002–1006, 1011–1018).[5] Richards admitted on the stand his anti-Nazi sentiments (see R. 1077). The proposed cross-examination could have been material only to show either anti-Nazi bias or a disposition to favor the government, and, in view of the other evidence in the case, it would have been merely cumulative. Under the circumstances, we submit that the court below properly ruled that there was no abuse of discretion on the part of the trial judge in imposing the narrow limitations which he did impose on the cross-examination of Richards. Cf. *Glasser* v. *United States,* 315 U. S.

[5] Petitioners' characterization of Richard's testimony (Pet. 27–28) is not supported by the record. There is no evidence that his memory "had to be constantly refreshed." He was not in semi-custody of the United States Attorney. He testified that the morning before he was cross-examined he had discussed dates of D. A. B. meetings with the assistant United States attorney for about half an hour, and that for part of that time the conference was interrupted by a telephone call to the assistant (R. 1042–1045). He was substantially corroborated, not only by the F. B. I. agents who testified, but by admissions made by one of the defendants who took the stand. (Cf. R. 993–994 with R. 1004–1005, 1013–1015, 1314–1315). As to witness's statement that he remembered what he was told to remember, he explained that he was told to concentrate on certain assignments, and that "if other things came up that wasn't within that scope, naturally I didn't bother with it or pay any attention to it" (R. 1052–1055).

60, 83; *District of Columbia* v. *Clawans,* 300 U. S. 617, 632; *United States* v. *Easterday,* 57 F. 2d 165, 166 (C. C. A. 2), certiorari denied, 286 U. S. 564.

3. Petitioners raise but do not brief certain other contentions.

(a). In effect they challenge the sufficiency of the evidence by asserting (Pet. 17) that there was no evidence of an agreement with the German government other than the Labor Front agreement relating to the care of German nationals and refund of dues paid by American citizens. However, even Johannsen, who testified that the letter of January 7, 1937 on Labor Front stationery was the only agreement between a German instrumentality and D. A. B. (see *supra,* p. 8), stated in his announcement to the membership that an agreement had been reached as to dissemination of the Labor Front publication and as to privileges of American members visiting Germany (*supra,* p. 9), thus showing clearly that in 1937 there was an agreement between D. A. B. and the Labor Front broader in scope than that revealed by the letter of January 7. Johannsen also testified that he arranged with Orgell for distribution of the V. D. A. magazine (*Der Volksdeutsche*) after cancellation of the Labor Front agreement in 1938 (R. 443–444). All the evidence set forth in the statement, *supra,* indicates, as the jury and the court below found, that D. A. B. and its officers did in fact agree

to act at the behest and under the direction of the German government and its instrumentalities, both prior to and after the cancellation of the Labor Front agreement. As the majority opinion below stated (R. 1388), the Labor Front agreement "was simply part of the chain of proof which assisted in showing the connection between the German Reich and its subsidiaries with the D. A. B."

(b) Petitioners also argue (Pet. 18) that there is no evidence that the individual petitioners advised or assisted D. A. B. to fail to register as required by law. Without detailing the evidence as to various acts performed by each of the petitioners, we think it is sufficient to note that all of them, except petitioner Gibbe, were members of the National Board of Directors of D. A. B. for the crucial period after passage of the McCormack Act. Gibbe was an officer of the San Francisco chapter (R. 1150, 1152, 1163), continuing to act as such after cancellation of the Labor Front agreement, although he was a German national (Ex. G–171). Schroeder was national president after 1939, and Lieblein was vice-president (R. 732–733). Lieblein was also leader of the youth group and allowed *In Retrospect* to be registered in his name (see *supra*, pp. 13, 17, 19). Bertram was secretary after 1939, and with Lieblein took care of the minutes and of all the mail (R. 1277–1278). Bremer was a leading officer of the Philadelphia chapter (R. 868, 897).

Koehn was editor of *In Retrospect* and chapter leader for Manhattan (R. 1176–1177). Schmidt was midwestern district leader (R. 1120).

The judge charged the jury that the individual defendants were guilty only if, knowing of the agency of D. A. B. and its obligation to register, they conspired to aid and abet or assist and advise the organization not to register (R. 1358–1359). He cautioned them to consider the evidence against each individual separately (R. 1361), and instructed them that mere membership or holding of office was not conclusive proof of guilt (R. 1363). The circuit court of appeals found that the evidence involved all the petitioners "as active participants in the conspiracy charged to a greater or lesser degree" (R. 1391). The question is wholly one of the sufficiency of the evidence and presents no problem for review by this Court. *United States* v. *Johnson,* 319 U. S. 503, 518; *Delaney* v. *United States,* 273 U. S. 586, 589–590.

(c) Petitioners challenge the admissibility of expert evidence of propaganda analysis as unscientific (Pet. 17–18). However, the expert testimony was largely a computation and summary of the articles appearing in the publications admitted in evidence. As to the German language publications, the analysis was based on a count of the articles favorable or unfavorable to Germany and the United States and a comparison with German source material. (See *supra,* pp. 11, 16–

17.) As to *In Retrospect,* it was an analysis of articles relating to certain themes (R. 690). The basis for the analysis was thus clearly shown, and the expert was subject to cross-examination. The judge charged the jury that this testimony was not binding but was to be given such weight as the jury thought it merited. (R. 1365–1366.) We submit that this type of analysis of articles properly in evidence was clearly competent. See *United States* v. *Pelley,* 132 F. 2d 170, 180–181 (C. C. A. 7), certiorari denied, 318 U. S. 764.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for writs of certiorari should be denied.

J. HOWARD MCGRATH,
Solicitor General.
THERON L. CAUDLE,
Assistant Attorney General.
ROBERT S. ERDAHL,
BEATRICE ROSENBERG,
Attorneys.

APRIL 1946.